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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,300	09/10/2004	Martina Koenig	2901886-000020	4910

84331 7590 07/02/2009  
Baker Donelson Bearman, Caldwell & Berkowitz, PC  
555 Eleventh Street, NW, Sixth Floor  
Washington, DC 20004

EXAMINER
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JACOBSON, MICHELE LYNN

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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07/02/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/507,300	<b>Applicant(s)</b> KOENIG ET AL.	
	<b>Examiner</b> MICHELE JACOBSON	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-15 and 17-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-15 and 17-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Examiner Notes*

1. Any objections and/or rejections made in the previous action, and not repeated below, are hereby withdrawn.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 4-15 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer et al. U.S. Patent No. 6,200,613 (hereafter referred to as Schafer) and Rusmussen et al. U.S. Patent No. 4,470,171 (hereafter referred to as Rusmussen).
4. Schafer teaches a tubular food casing comprising at least one steam and/or gas impermeable outer layer and an absorbent inner layer comprising cotton fibers, cellulose fibers, regenerated cellulose fibers, viscose fibers, fabric or fleece impregnated with coloring and/or flavoring agents useful as a casing for sausage products subjected to cooking or boiling in production. (Col. 2, lines 5-10, 25-28, Col. 4, lines 25-36) The outer barrier layer comprises two polyethylene layers with a polyamide

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(Nylon) layer disposed in between. (Col. 2, lines 55-58) The barrier casing is recited to be airtight and gastight, especially against steam and oxygen. (Col. 2, lines 58-60)

5. All of the materials for the casing are recited to be laminated together and an adhesive agent is recited to be used. (Col. 3, lines 24-24) The inside polyethylene layer is recited to be advantageously extruded wet onto the already laminated polyamide and outer polyethylene film so that it may function as an adhesive for the inner absorbent layer to be applied to. (Col. 3, lines 29-33)

6. The flavoring agents recited to be useful for the invention are caramel, aromatic extracts, smoke components, liquid smoke, marinades, fruit flavors and other substances allowed under the regulations governing food. (Col. 3, lines 3-7) The inner side of the barrier casing is recited to be coated with the absorbent inner layer which is then coated with flavoring agent by use of a spray tube, liquid bath or bubble coating while the casing is in tubular form indicating that the casing produced is seamless, as it is not recited to undergo a heat sealing step to form a tube as in the example where the flavoring agent is applied when the casing is in flat form. (Col. 3, lines 1-17) The inventive casing is recited to be joined together at the end by a band that is heat sealable. (Col. 3, lines 42-45)

7. Schafer is silent regarding providing the outer barrier layer disconnected from the inner flavor carrier layer, the oxygen and water vapor permeability of the barrier casing, and shirring the sausage casing.

8. Rasmussen teaches that shirred casings enhance productivity and efficiency because they allow a large number of sausages to be made from a single shirred casing

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stick in an automated operation. (Col. 1, lines 12-15) However, for multilayer casings, adhesion to the base tube can be a problem particularly considering the punishment the casing must take during shirring when it is tightly pleated, and subsequent to stuffing when it is stretched. As a specific example, Rasmussen discloses that fibrous casings coated to achieve oxygen barrier properties, while satisfactory for many applications, are not completely satisfactory for all because the barrier is not uniform or continuous and sometimes does not adhere adequately to the fibrous casing. (Col. 3, lines 1-10) Additionally, if a fibrous casing is coated with some form of barrier layer, the coating limits the ability of the fibrous casing to stretch and shrink without damaging the coating. (Col. 9, lines 10-15)

9. To solve these problems, Rasmussen discloses a multilayer casing wherein the layers are not bonded to one another throughout the length of the casing. The shirred casing lengths are arranged in tandem with an unshirred end of one within the bore of the other and joined to an unshirred end of the other by means of a clip for simultaneous deshirring upon stuffing. (Col. 7, lines 36-37) Both casing lengths have sufficient extensibility to be stretched to the maximum desired circumference during stuffing and processing without rupture. Both casing lengths also have sufficient shrinkability to stay in wrinkle-free contact on the encased product as it contracts during processing, thereby to form a finished encased product having a composite casing, the elements of which are in intimate wrinkle-free contact on the finished encased product, and each providing its own properties to the product. (Col. 3, lines 38-49) Such a

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casing does not suffer from the discontinuities and coating damage observed in casings where the barrier layers are coated since each layer is independent of the other.

10. When selecting the materials for the two different layers, Rasmussen discloses that it is important to take into account matching the circumference, extensibility and shrinkability of the casing layers. (Col. 9, lines 47-53)

11. Regarding claims 1, 5, 6, 7, 8 and 15: Both Schafer and Rasmussen are directed towards sausage casings having barrier layers. One of ordinary skill would have been motivated to utilize the structure of Rasmussen and provide the interior fibrous layer recited by Schafer separated from the exterior barrier layer in order to prevent the discontinuities and damage that can occur in barrier layers as recited by Schafer. The casing recited by Schafer comprising the flavor enhanced fibrous interior layer bonded to the exterior polyethylene/polyamide barrier layer only by means of a clip employed as intended for cooking sausage would have been the same as the invention claimed in claims 1, 5, 6, 7, 8 and 15.

12. Regarding claims 2, 18 and 19: Rasmussen clearly recites matching the extensibility (stuffing caliber) of the casings.

13. Regarding claims 4 and 17: Schafer specifically recites that the polyamide and polyethylene barrier layers were selected to be steam and gas impermeable (Col. 2, lines 6-7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have optimized the thickness of the barrier films to achieve whatever level of water and oxygen permeability that was desired for the application that the casing was to be utilized for. This obvious optimization of a result effective

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variable would have produced a casing with a water vapor and oxygen permeability the same as that claimed in claims 4 and 17.

14. Regarding claims 12-14: Rusmussen clearly recites providing the interior fibrous layer arranged immediately after the exterior barrier layer, passing the fibrous casing through the bore of the barrier layer and securing the casings to one another by means of a clip. The casing of Schafer employing this configuration would have been the same as that claimed in claims 12-14.

15. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer et al. U.S. Patent No. 6,200,613 (hereafter referred to as Schafer) and Rusmussen et al. U.S. Patent No. 4,470,171 (hereafter referred to as Rusmussen) and Ito et al. European Patent Application Publication No. 408164 ((hereafter referred to as Ito).

16. Schafer and Rusmussen teach what has been recited above but are silent regarding disposing a binder with the flavor enhancing material recited.

17. Ito teaches a water-resistant matrix web for use in flavoring sausages with a food flavoring material disposed on it comprising food flavoring material dispersed on a binder material. (Pg. 2, lines 27-30) The water resistant matrix web is recited to be comprised of natural or artificial fiber materials such as polymers of cellulose and other natural materials (viscose, acetate, etc), polyester, polyamide, polyethylene, polypropylene and viscose coated Manilla paper. (Pg. 2, lines 37-44, 56)

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18. The food layer is recited to include herbs, pepper, cheese powder and powders of vegetable extracts. (Pg. 3, lines 8-17) The binder layer for the flavoring material is recited to be comprised of polysaccharides such as starch, modified starch, carboxymethylcellulose and protein such as gelatin. (Pg. 3, lines 22-28) The selection of these materials is recited to result in the food layer being neatly transferred onto the surface of the food disposed in a casing made of such a laminate.

19. Ito, Schafer and Rusmussen are all directed towards sausage production. Both Ito and Schafer are directed to casing for use in imparting additional flavor to sausages. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized the flavoring material comprising a food additive and binder material in order facilitate transfer onto the food surface of the food disposed in the casing as recited by Ito. This obvious utilization of flavoring layer known in the art would have produced the same invention as claimed in claims 9-11. Since the binder materials recited by Ito are designed to facilitate the transfer of the entire food layer to the sausage being produced it is inherent that these substances would decrease the water solubility of the flavoring materials in the layer, thus meeting the limitations of claim 11.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP



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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHELE JACOBSON whose telephone number is (571)272-8905. The examiner can normally be reached on Monday-Thursday 8:30 AM-7 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michele L. Jacobson  
Examiner  
Art Unit 1794

/M. J./

/Rena L. Dye/  
Supervisory Patent Examiner, Art Unit 1794